

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jul 25, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,  
-vs-  
RONALD CRAIG ILG,  
Defendant

Nos. 2:21-CR-0049-WFN-1

A pretrial conference and motion hearing was held July 20, 2022. The Defendant, who is in custody, was present and represented by Carl Oreskovich and Andrew Wagley; Assistant United States Attorneys Richard Barker and Patrick Cashman represented the Government.

The Court addressed pending pretrial motions. The parties indicated that both the Government and the defense plan to submit evidence of Defendant's attempted suicide, so the admissibility questions raised in the Government's Motion to Admit Evidence of Defendant's Attempted Flight to Show Consciousness of Guilt are moot. ECF No. 123. The parties will revisit the advisability of a jury instruction during the course of the trial. The Court asked the parties whether, due to the nature of the evidence, they would like jurors to complete a special questionnaire. The parties gave no strong inclination but will submit proposed questions by the deadline set by the Court if they would like a supplemental questionnaire delivered to jurors.

Though the Defendant maintains his objection raised in previous hearings to the transcript, the Defendant has no objection to distributing a transcript to jurors to aid understanding of audio recordings of the Defendant. Accordingly, the Court granted the Government's Motion for Use of Transcript, ECF No. 122.

## ORDER - 1

1       The Court now confirms the inclination shared from the bench reserving, in part, and  
2 denying, in part, Defendant's Motion to Exclude Alleged Dark Web Messages and Websites.  
3 ECF No. 119. Defendant moved to exclude three related classes of evidence: (1) images  
4 of / from the websites that Defendant allegedly accessed on the dark web; (2) messages  
5 exchanged between "Scar215" and unknown persons associated with the dark websites,  
6 sometimes referred to as administrators; and (3) the "transcript" of messages and other  
7 materials the BBC provided to law enforcement. Defendant raises three primary grounds for  
8 exclusion: (1) the Confrontation Clause prevents admission of any of the materials; (2) the  
9 materials cannot be authenticated; and (3) the content of the websites as well as the messages  
10 sent by the "administrators" are inadmissible hearsay.

11       **I. Confrontation Clause**

12       Defendant argues that the content of the dark websites, the messages exchanged on  
13 those websites, and the transcript provided by the BBC are testimonial and therefore fall  
14 afoul of the Confrontation Clause. According to the Defendant, any statements that implicate  
15 a person in a crime, and are thus potentially relevant to proceedings in later criminal  
16 prosecution, regardless of the context of the statement, are testimonial because anyone  
17 engaged in criminal activity should objectively know that any statements made could be  
18 relevant for a future criminal prosecution. The Court disagrees with such a broad reading of  
19 the Confrontation Clause.

20       Statements run afoul with the Confrontation Clause when those statements are  
21 testimonial, with no prior opportunity to cross-examine, which are offered for the truth of  
22 the matter. "Testimonial statements of witnesses absent from trial have been admitted only  
23 where the declarant is unavailable, and only where the defendant has had a prior opportunity  
24 to cross-examine." *Crawford v. Washington*, 541 U.S. 36, 59 (2004). "[T]here is simply no  
25 way around the proviso in *Crawford* that the Confrontation Clause applies only to  
26 out-of-court statements that are used to establish the truth of the matter asserted." *Williams*  
27 v. *Illinois*, 567 U.S. 50, 79. (2012). "The abuses that the Court has identified as prompting  
28 the adoption of the Confrontation Clause shared the following two characteristics: (a) they

1 involved out-of-court statements having the primary purpose of accusing a targeted  
2 individual of engaging in criminal conduct and (b) they involved formalized statements such  
3 as affidavits, depositions, prior testimony, or confessions." *Id.* at 82.

4 Testimonial statements are made to law enforcement, proxies of law enforcement, or  
5 in other limited circumstances where officials are seeking information. Unless the dark  
6 website in question were run by law enforcement in an attempt to catch bad actors,  
7 statements on those dark websites have no relation to investigation—use of the dark web  
8 typically reflects an attempt to avoid criminal prosecution. Statements made on dark  
9 websites are not testimonial just because the websites discuss criminal conduct. Further,  
10 even assuming in arguendo that any statement on the dark web discussing criminal conduct  
11 qualifies as a testimonial statement, the Government does not seek to offer the statements  
12 for the truth of the matter. Whether or not the website *actually* offers hitmen to commit  
13 crimes on behalf of a paying customer is not relevant to the issues to be determined by the  
14 jury. Rather, the important issues are whether Scar215 *believed* that he was hiring a hitman  
15 to bring harm to another.

## 16 **II. Authentication**

17 "To satisfy the requirement of authenticating or identifying an item of evidence, the  
18 proponent must produce evidence sufficient to support a finding that the item is what the  
19 proponent claims it is." FED R. EVID. 901(a). Defendant argues that in the case of websites,  
20 the only way to authenticate is through testimony of a person familiar with the server or  
21 technical workings of the site. In the case of legally operated websites, such a requirement  
22 is not unduly burdensome, but in the case of websites created for the purpose of conducting  
23 illegal activities, or those intending to defraud the visitors, such a requirement would  
24 effectively exclude all web-based evidence. The Court concludes that the Government's  
25 proffered authentication—including the Defendant's own records as well as FBI agents'  
26 investigation resulting in video and screenshots of the dark web activity adequately  
27 authenticates the materials gathered from the dark websites including both the messages and  
28 the content of the websites. However, the Court concurs with the Government that the

1 transcripts provided by the BBC lack authentication at this point. The Court finds that the  
2 content of the dark websites and messages accessed by the FBI agents are admissible, but  
3 reserves ruling on the messages contained solely in the transcript provided by the BBC.

4 **III. Hearsay**

5 Lastly, Defendant argues that the content of the websites as well as the messaging  
6 responses to Scar215 represent inadmissible hearsay and must be excluded. The Court  
7 disagrees. The Government proffered evidence supporting the conclusion that Defendant is  
8 Scar215. The party opponent exception to the hearsay rule authorizes admission of  
9 Defendant's statements including the messages sent to the dark website. Responsive  
10 messages need not be admitted for the truth of the matter and therefore do not qualify as  
11 hearsay. Statements made in response to Defendant's message provide context for his  
12 admissible statements. Further, the content of the website also need not be admitted for the  
13 truth of the matter. The fact that the website purported to provide hitmen for hire explains  
14 why Defendant attempted to hire a hitman through the website but need not be true for the  
15 Government to prove their case.

16 For the reasons stated above, the Defendant's Motion to Exclude Alleged Dark Web  
17 Messages and Websites is denied, in part, but reserved as to the transcripts of messages  
18 provided by the BBC. The Court has reviewed the file and motions and is fully informed.  
19 This Order is entered to memorialize and supplement the oral rulings of the Court.  
20 Accordingly,

21 **IT IS ORDERED** that:

22 1. Defendant's Motion to Exclude Alleged Dark Web Messages and Websites, filed  
23 July 1, 2022, **ECF No. 119**, is **DENIED IN PART** and **RESERVED IN PART**.

24 2. The Government's Motion for Use of Transcript, filed July 1, 2022, **ECF No. 122**,  
25 is **GRANTED**.

26 3. The Government's Motion to Admit Evidence of Defendant's Attempted Flight to  
27 Show Consciousness of Guilt, filed July 1, 2022, **ECF No. 123**, is **GRANTED**. However,  
28 the Court will discuss advisability of a jury instruction at a later date.

1       4. The Government's Motion to Seal, filed July 8, 2022, **ECF No. 128**, is  
2 **GRANTED**. The proposed filed documents shall be filed under seal.

3       5. If the parties would like the Court to issue a supplemental questionnaire, they shall  
4 submit proposed questions no later than **August 29, 2022**.

5       6. Trial briefs, motions in limine, requested voir dire and a set of proposed **JOINT**  
6 **JURY INSTRUCTIONS** shall be filed and served on or before **September 2, 2022**.

7       Jury instructions should only address issues that are unique to this case and shall  
8 include instructions regarding the elements of each claim, any necessary definitions, and a  
9 proposed verdict form.

10      The Joint Proposed Jury Instructions shall include:

11      (a) The instructions on which the parties agree; and

12      (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed  
13 version of an instruction upon which they do not agree). All jury instructions from the most  
14 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by  
15 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements  
16 of LR 51.1(c).

17      Each party shall address any objections they have to instructions proposed by any  
18 other party in a memorandum. The parties shall identify the specific portion of any proposed  
19 instruction to which they object and shall elaborate the basis for the objection. Objections  
20 asserting that an instruction sets forth an incorrect statement of law shall describe the legal  
21 authority that supports this objection. Failure to file an objection and supporting argument  
22 may be construed as consent to the adoption of an instruction proposed by another party.

23      7. The parties are requested to submit courtesy copies of witness and exhibit lists to  
24 the Court no later than **12:00 noon the Monday before trial**.

25      8. An additional pretrial conference shall be held **September 6, 2022, at 9:00 a.m.**,  
26 **in Spokane**, Washington.

27      (a) All additional motions shall be filed and served no later than **August 22,**  
28 **2022**.

(b) Responses shall be filed and served no later than **August 29, 2022**.

9. All time from the filing of Defendant's Motion to Exclude Alleged Dark Web Messages and Websites on July 1, 2022, to the date of the hearing on July 20, 2022, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(1)(D).

10. The following procedures shall be utilized at trial:

(a) The Court will conduct the majority of jury voir dire but allow counsel ten minutes to ask additional questions or to do a more in depth exploration of issues raised by the Court;

(b) A total of 14 jurors will be selected, with the Government having 7 peremptory challenges and Defendant having 11 challenges. The challenges shall be exercised simultaneously;

(c) Regular trial hours shall be from 8:30 a.m. to 12:00 noon, and 1:00 p.m. to 4:00 p.m. Monday through Thursday, the Court will recess trial on Friday, September 23, 2022, and may impose a different schedule on the following Friday if the trial will spill into October;

(d) The jurors will be provided with notebooks for note-taking and a copy of the preliminary instructions;

(e) Documents published to the jury by counsel shall be collected at the conclusion of trial each day or following a witness's testimony regarding the published document;

(f) Examination of witnesses shall be limited to direct, cross, redirect and recross. FED. R. EVID. 611(a);

(g) Counsel are encouraged to limit requests for sidebars by anticipating legal and evidentiary issues so that the issues may be addressed before trial begins each day, during the lunch hour, or after trial hours;

(h) During trial, counsel are encouraged to exchange lists of the next day's witnesses and exhibits so that objections or legal issues may be anticipated and resolved outside the normal trial hours; and

1 (i) Counsel shall have the next witness to be called to testify available to avoid  
2 delay; and

3 The District Court Executive is directed to file this Order and provide copies to  
4 counsel.

5 **DATED** this 25th day of July, 2022.

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8 WM. FREMMING NIELSEN  
9 SENIOR UNITED STATES DISTRICT JUDGE

07-20-22

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